

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

LON PERRY EDGE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. CIV-08-229-RAW
(Underlying Case No. CR-05-086)

ORDER

This matter comes before the court on Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody and his Motion for Assignment of Counsel filed on June 20, 2008. Petitioner also filed a "Supplemental Amended Pleading in Support of 28 U.S.C. § 2255 Motion" on July 7, 2008.

BACKGROUND

On January 4, 2006, Petitioner was found guilty by a jury of Counts 1, 2 and 3 of a four count Indictment. He was convicted of possession of a firearm and ammunition by a prohibited person in violation of 18 U.S.C. § 922(g)(8). On June 30, 2006, he was sentenced to forty-four months in the custody of the Bureau of Prisons. He also received thirty-six months supervised release and a one hundred dollar special assessment on each count for a total of three hundred dollars. The Judgment and Commitment was entered on July 10, 2006.

Petitioner filed his Notice of Appeal to the Tenth Circuit on July 7, 2006. On July 30, 2007, the Tenth Circuit issued an Order and Judgment affirming the conviction of Petitioner in this court. On November 1, 2007, Petitioner filed a copy of his motion for an extension of time to file a request for certiorari review of his case by the United States Supreme Court. He has not kept this court apprised of the outcome of that motion.

Also, in April of 2008, Petitioner filed two motions in his criminal action (Docket Nos. 79 & 80) seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b). Both motions were denied in an order by this court on April 25, 2008. He also filed a motion for discovery, which was denied in an order by this court on April 29, 2008. Petitioner has appealed both of those orders to the Tenth Circuit.*

PREMATURE FILING

Absent extraordinary circumstances, it is inappropriate for the court to consider a § 2255 motion while a direct appeal is pending. United States v. Cook, 997 F.2d 1312, 1319 (10th Cir. 1993) (“Absent extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending.”) Petitioner has a direct appeal of this court’s orders in his criminal action pending before the Tenth Circuit. He may also still be awaiting a ruling from the Supreme Court.

Petitioner has not brought to the court’s attention any extraordinary circumstances. Moreover, while Petitioner has requested a stay, it is in his best interest for his § 2255 action to

*Petitioner has also filed a civil action against several defendants in relation to his criminal case. He has filed a motion in his civil case requesting a stay in it and in this § 2255 action.

be dismissed at this time. Generally, a criminal defendant receives only one opportunity to file a § 2255 motion. The current motion was filed prematurely and will not count against Petitioner.

Accordingly, the current action is hereby DISMISSED without prejudice to Petitioner refiling a § 2255 motion at the appropriate time – once his direct appeal(s) are concluded. Also, the court directs Petitioner to 28 U.S.C. § 2255(f).

IT IS SO ORDERED this 21st day of August, 2008.

Dated this 21st Day of August 2008.

J4h4i0

A handwritten signature in cursive script, reading "Ronald A. White", written in black ink over a horizontal line.

Ronald A. White
United States District Judge
Eastern District of Oklahoma